



**BILLING CODE: 8070-01-P**

**FEDERAL HOUSING FINANCE AGENCY**

**12 CFR Chapter XII**

**[No. 2018-N-03]**

**Notice of Regulatory Review**

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Request for comment.

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**SUMMARY:** The Federal Housing Finance Agency (FHFA) is issuing a notice of a regulatory review to be conducted in accordance with the process set forth in its Regulatory Review Plan published in February 2012, and requesting comments on how its regulations may be made more effective and less burdensome.

**DATES:** Written comments on this notice of regulatory review must be received no later than [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit your comments, identified by “Regulatory Review [No. 2018–N–03]”, by any of the following methods:

- *Agency Web site:* [www.fhfa.gov/open-for-comment-or-input](http://www.fhfa.gov/open-for-comment-or-input).
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) to ensure timely receipt by FHFA. Please include “Regulatory Review [No. 2018–N–03]” in the subject line of the message.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The

mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/Regulatory Review [No. 2018–N–03], Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW, Washington, DC 20219.

- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/Regulatory Review [No. 2018–N–03], Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

All comments received will be posted without change on FHFA’s Web site at <http://www.fhfa.gov>, and will include any personal information provided, such as name, address (mailing and email), and telephone numbers. In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

**FOR FURTHER INFORMATION CONTACT:** Ellen S. Bailey, Managing Associate General Counsel, [ellen.bailey@fhfa.gov](mailto:ellen.bailey@fhfa.gov), (202) 649–3056 (this is not a toll-free number), Federal Housing Finance Agency, Constitution Center, (OGC) Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background; FHFA’s Regulatory Review Plan**

FHFA was established by the Housing and Economic Recovery Act of 2008, Pub. L. 110-289, to supervise and regulate the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (together, the

Enterprises), the Federal Home Loan Banks (the Banks), and the Office of Finance of the Federal Home Loan Bank System (OF). In 2012, FHFA developed its Regulatory Review Plan (Review Plan) after considering principles set forth in Executive Order 13579, “Regulation and Independent Regulatory Agencies” (July 11, 2011).<sup>1</sup> Executive Order 13579 requested—but did not require—independent regulatory agencies, such as FHFA, to develop, release to the public, and implement a plan for the periodic review of their existing significant regulations to determine whether any regulation should be modified, streamlined, expanded, or repealed to make the agency’s regulatory program more effective or less burdensome in achieving its objectives.

Under its Review Plan, FHFA reviews its regulations at least every five years, except for those regulations that were adopted or substantially amended within the two years prior to issuance of a Notice of Regulatory Review and rules of agency organization, procedure, or practice. The Review Plan suggests factors that commenters should consider to assist FHFA, including factors related to legal, regulatory, or market developments, regulatory overlap, less burdensome alternatives, and clarity of regulatory requirements.

## **II. Results of the 2013 Regulatory Review**

FHFA’s first regulatory review was initiated by a Notice of Regulatory Review and request for comments in April 2013,<sup>2</sup> and considered 44 regulations. FHFA received two comment letters: a joint letter from all of the Banks that addressed the Affordable Housing Program, capital regulation, liabilities, and new business activities, and a letter from a state-chartered credit union on compliance requirements for organizations that

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<sup>1</sup> 77 FR 10351 (Feb. 22, 2012) (FHFA Regulatory Review Plan); *see also* 76 FR 41585 (July 14, 2011) (E.O. 13579).

<sup>2</sup> 78 FR 23507 (Apr. 19, 2013).

deliver loans for sale to Fannie Mae and Freddie Mac, but that did not identify any particular regulation for revision. FHFA also conducted an internal review of its regulations that were subject to the five-year Review Plan, seeking staff input on the same questions on which the Review Notice sought public comment.

FHFA evaluated all of the comments that it received and determined that some amendments were warranted. Recent rulemakings to amend FHFA's regulations on new business activities and affordable housing programs of the Banks included proposed amendments that addressed concerns raised in the Banks' joint comment letter.<sup>3</sup> Revised liquidity guidance, which was also requested by the Banks, is under development.

### **III. FHFA's 2018 Regulatory Review; Request for Comment**

Consistent with its Review Plan, FHFA's next regulatory review must begin not later than five years after its prior review, or by March or April 2018. All current regulations—except, as noted, rules of agency organization, procedure, or practice, or regulations adopted or substantially amended since April 2016 (meaning, within the past two years)—are subject to review. Members of the public may comment on recently adopted or amended regulations, and FHFA will take those comments into account as appropriate. FHFA does not anticipate responding to individual comments.

FHFA's regulations are published in Chapter XII of Title 12 of the Code of Federal Regulations, except for those regulations of predecessor agencies which FHFA has not yet moved.<sup>4</sup> FHFA's regulations are also posted on the FHFA Internet Web site at

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<sup>3</sup> For revisions to the regulation on New Business Activities of the Banks, *see* 81 FR 57499, 57500-02 (Aug. 23, 2016) (Notice of Proposed Rulemaking) and 81 FR 91690 (Dec. 19, 2016) (Final Rule), *amending* 12 CFR Part 1272. For proposed amendments to the Affordable Housing Program (AHP) regulation, *see* 83 FR 11344 (Mar. 14, 2018), which would amend 12 CFR Parts 1290 and 1291.

<sup>4</sup> FHFA currently administers three regulations that are not rules of agency organization, procedure, or practice that are located outside of Chapter XII. These are a regulation of the former Federal Housing

<http://www.fhfa.gov>.

FHFA hereby requests comment on its regulations for purposes of improving their effectiveness and reducing their burden. Factors that FHFA's Review Plan identifies as relevant to the review, and which FHFA suggests should guide commenters, are:

- (1) Legal or regulatory developments—including new laws, executive orders, or judicial decisions that have been adopted since the promulgation of a regulation—that make a regulation inefficient, obsolete, contrary to controlling legal precedent, or unduly burdensome;
- (2) Marketplace developments, technological evolution, and related changes that may have rendered a regulation, in whole or in part, inefficient, outmoded, or outdated;
- (3) The extent to which provisions of the regulation are written in plain language or need clarification;
- (4) Compelling evidence that a consolidation of two or more regulations, elimination of a duplicative regulation, or other revision to regulatory requirements would facilitate compliance by Fannie Mae, Freddie Mac, the Banks, or OF with the regulation, or would improve supervision by FHFA of Fannie Mae, Freddie Mac, the Banks, or OF; and
- (5) Demonstration of a better alternative method to effect a regulatory purpose or

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Finance Board on Federal Home Loan Bank Capital Requirements, at 12 CFR Part 932; a regulation of the former Office of Federal Housing Enterprise Oversight on Enterprise Capital, at 12 CFR Part 1750; and a regulation of the Department of Housing and Urban Development on public-use databases and public information provided by the Enterprises, at 24 CFR Part 81, Subpart F. FHFA proposed amending the Bank Capital Requirements regulation in 2017 (82 FR 30776 (July 3, 2017)), and is taking comments received on that proposal into account to develop a final rule. FHFA will not delay publication of that final rule based solely on this regulatory review. The Enterprise Capital Requirements regulation has been suspended. *See* FHFA News Release, "FHFA Announces Suspension of Capital Classifications" (Oct. 9, 2008). FHFA is currently developing a proposed rule on public-use databases and public information provided by the Enterprises and will solicit comments when that notice of proposed rulemaking is published.

requirement, supported by compelling evidence of significantly less intrusive means or of a substantially more efficient method of accomplishing the same supervisory purpose.

In accordance with FHFA's Review Plan, the 2018 regulatory review process will be conducted by the FHFA Office of General Counsel, which will review all comments received. FHFA's Office of General Counsel consults with other FHFA offices and divisions. A review and report of findings and recommendations will be provided to the FHFA Director on a timely basis. The report of findings and recommendations will be privileged and confidential. After receiving the report of findings and recommendations, the Director will determine what steps may be necessary to relieve any unnecessary burden, including amendment to or repeal of existing regulations or issuance of less formal guidance.

The 2018 FHFA regulatory review is not a formal or informal rulemaking proceeding under the Administrative Procedure Act, and creates no right of action against FHFA. FHFA's determination whether to conduct or not to conduct a review of a regulation and any determination, finding, or recommendation resulting from any review is not a final agency action and therefore is not subject to judicial review.

Dated: March 30, 2018.

Melvin L. Watt,  
*Director, Federal Housing Finance Agency.*

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